

# Newburyport Historical Commission

Handbook for Commissioners  
Official Role, Powers & Duties

# City Ordinances

[https://library.municode.com/ma/newburyport/codes/code\\_of\\_ordinances](https://library.municode.com/ma/newburyport/codes/code_of_ordinances)

**Chapter 2 (“Administration”) ► Article III (“Boards”) ► Division 3 (“Historical Commission”)**

**Chapter 5 (“Buildings”) ► Article X (“Building Demolition”)**

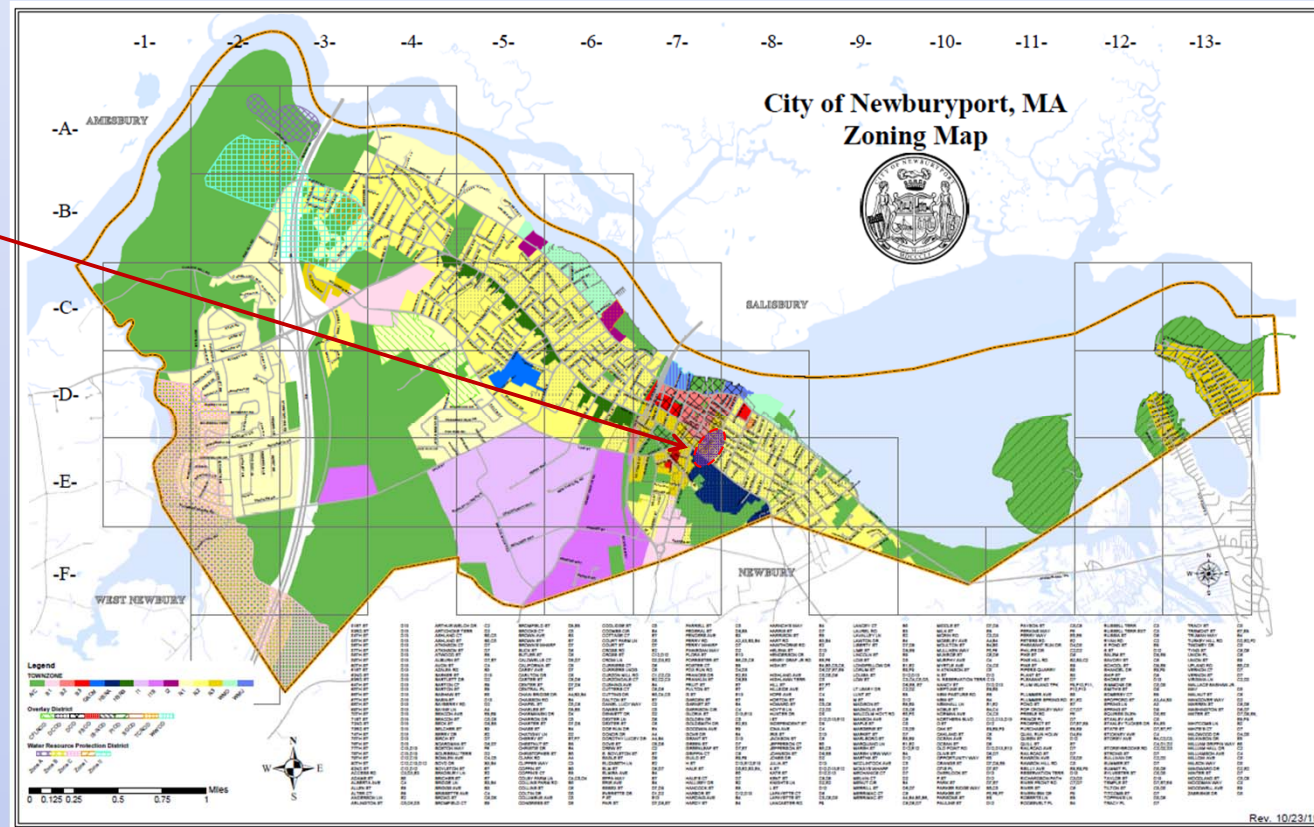
**Chapter 16 (“Local Historic District”) *(currently only the Fruit Street Historic District & Commission)***

**Appendix A (“Zoning Ordinance”) ► Section XXVII (“Downtown Overlay District”)**

**Appendix A (“Zoning Ordinance”) ► Section XXVIII (“Demolition Control Overlay District”)**

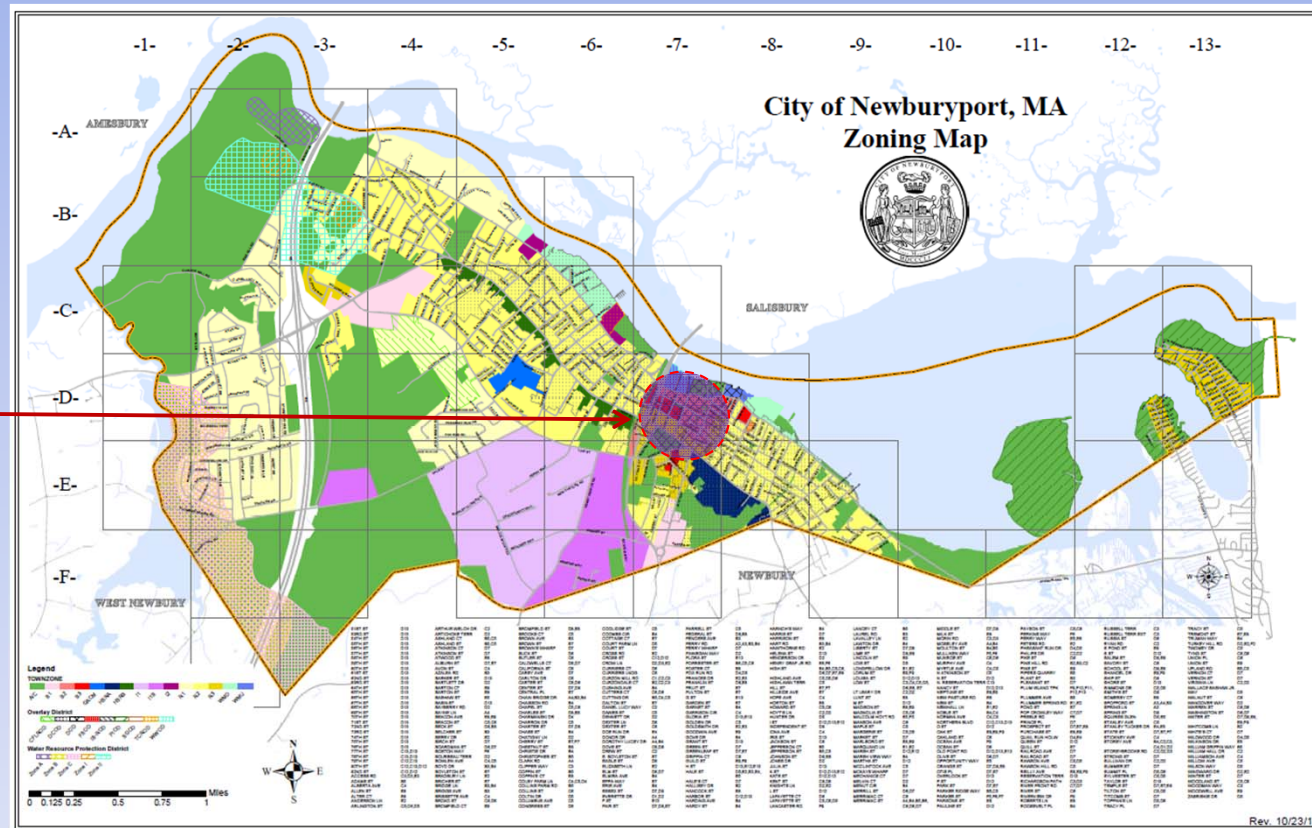
# Four Areas of Newburyport

1. **Fruit Street Local Historic District**
  - Fruit Street District Commission
2. **Downtown Overlay District (DOD)**
  - Planning Board
3. **Demolition Control Overlay District (DCOD)**
  - Zoning Board of Appeals (& NHC)
4. **The rest of Newburyport**
  - Historical Commission



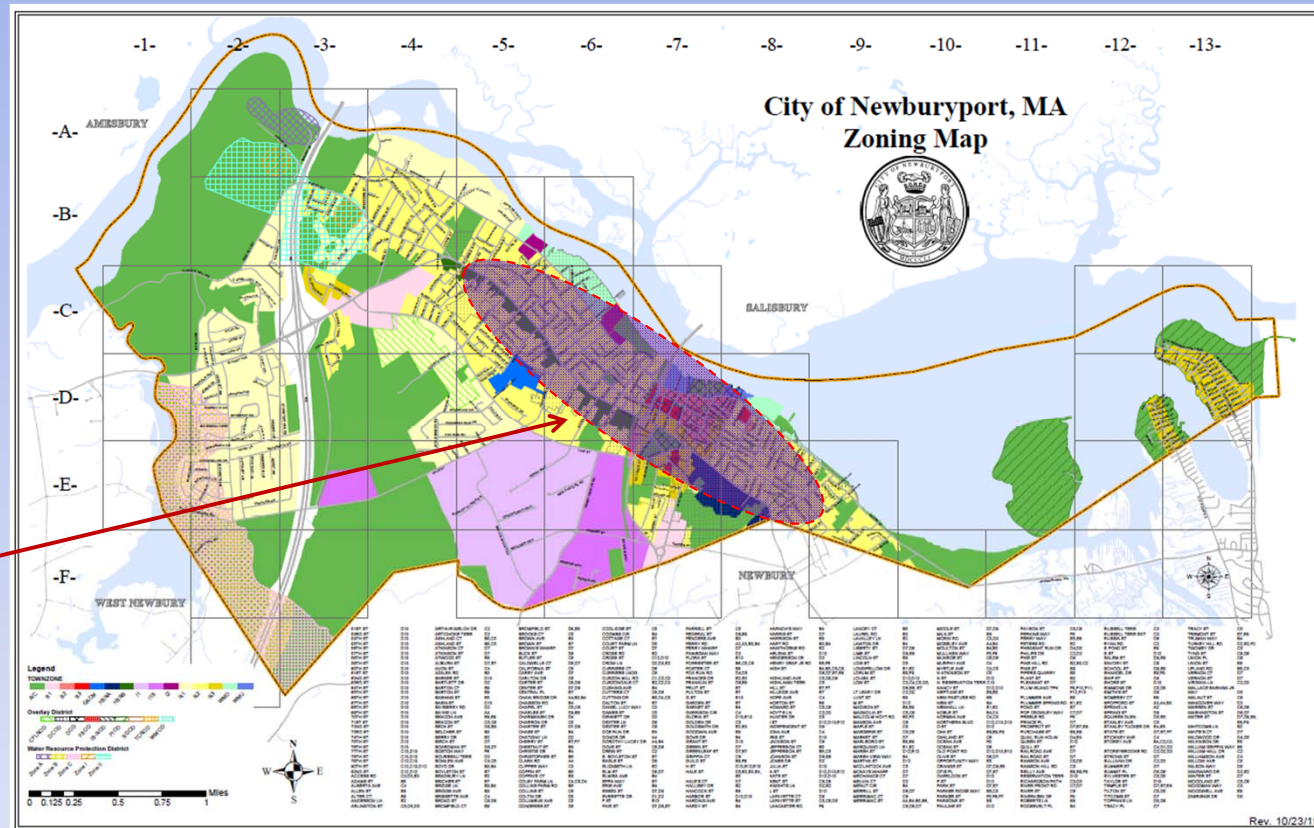
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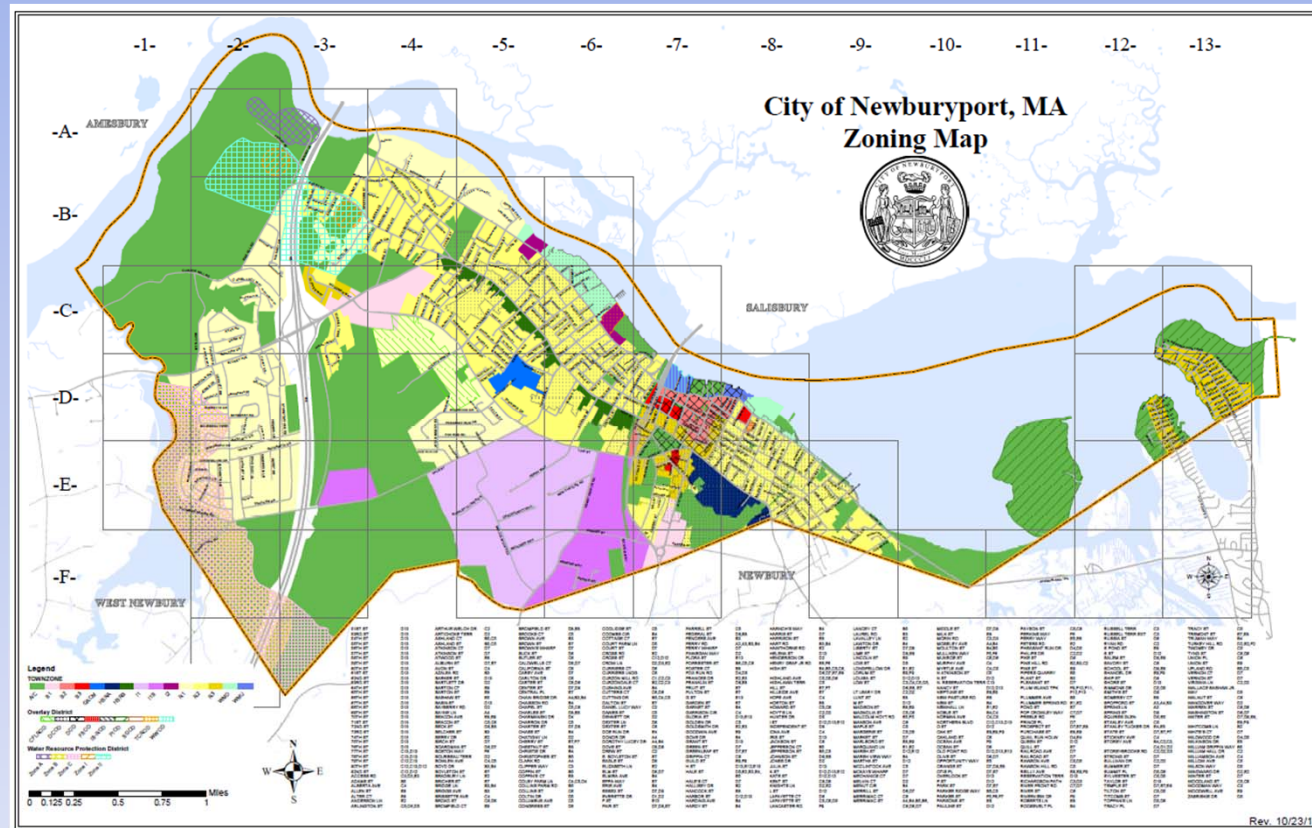
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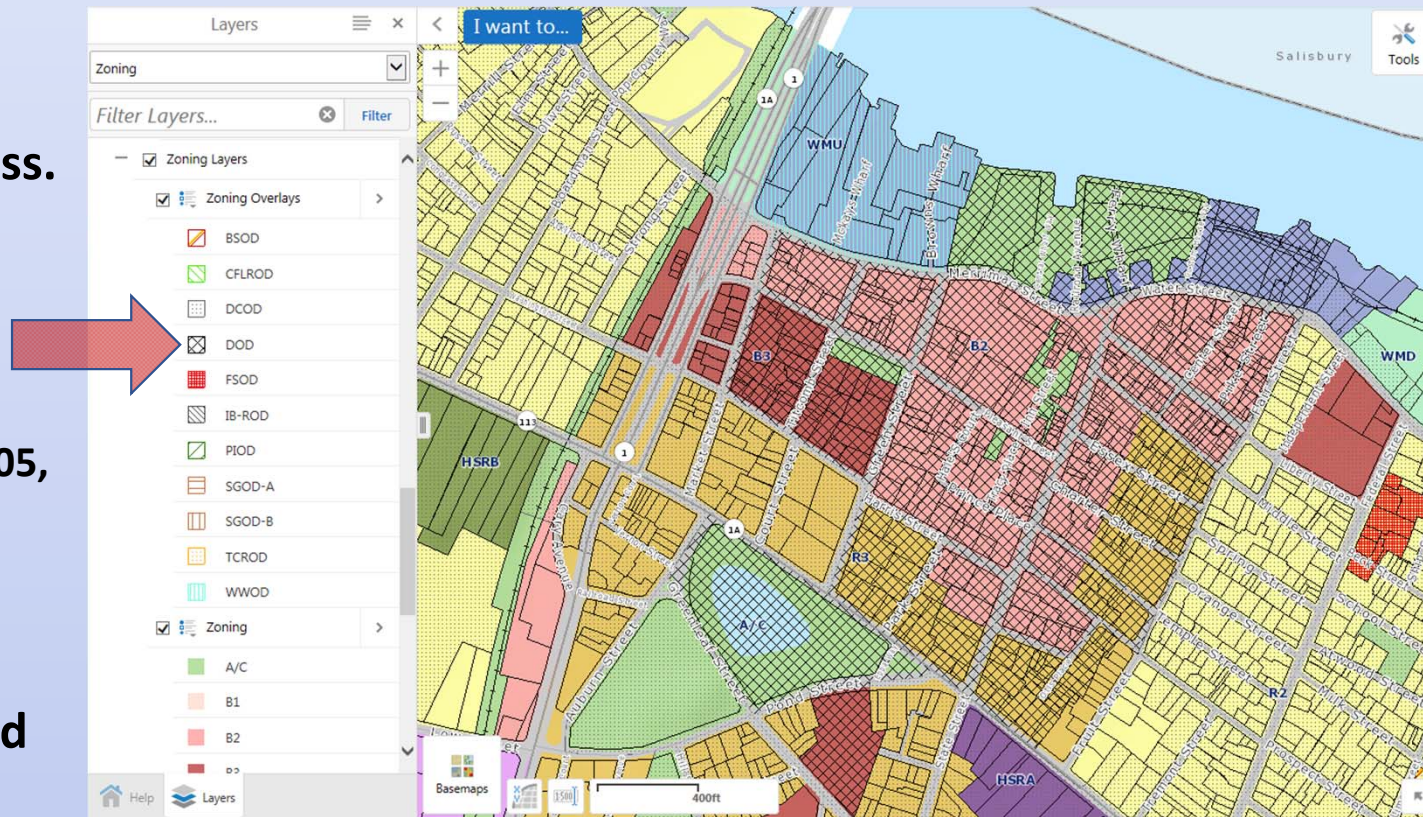
# Fruit St. Local Historic District

- City's only Local Historic District under Mass. General Laws c. 40C
  - Formed in 2007
  - Administered by Fruit Street LHD Commission
- Commission can also hold preservation restrictions



# Downtown Overlay District

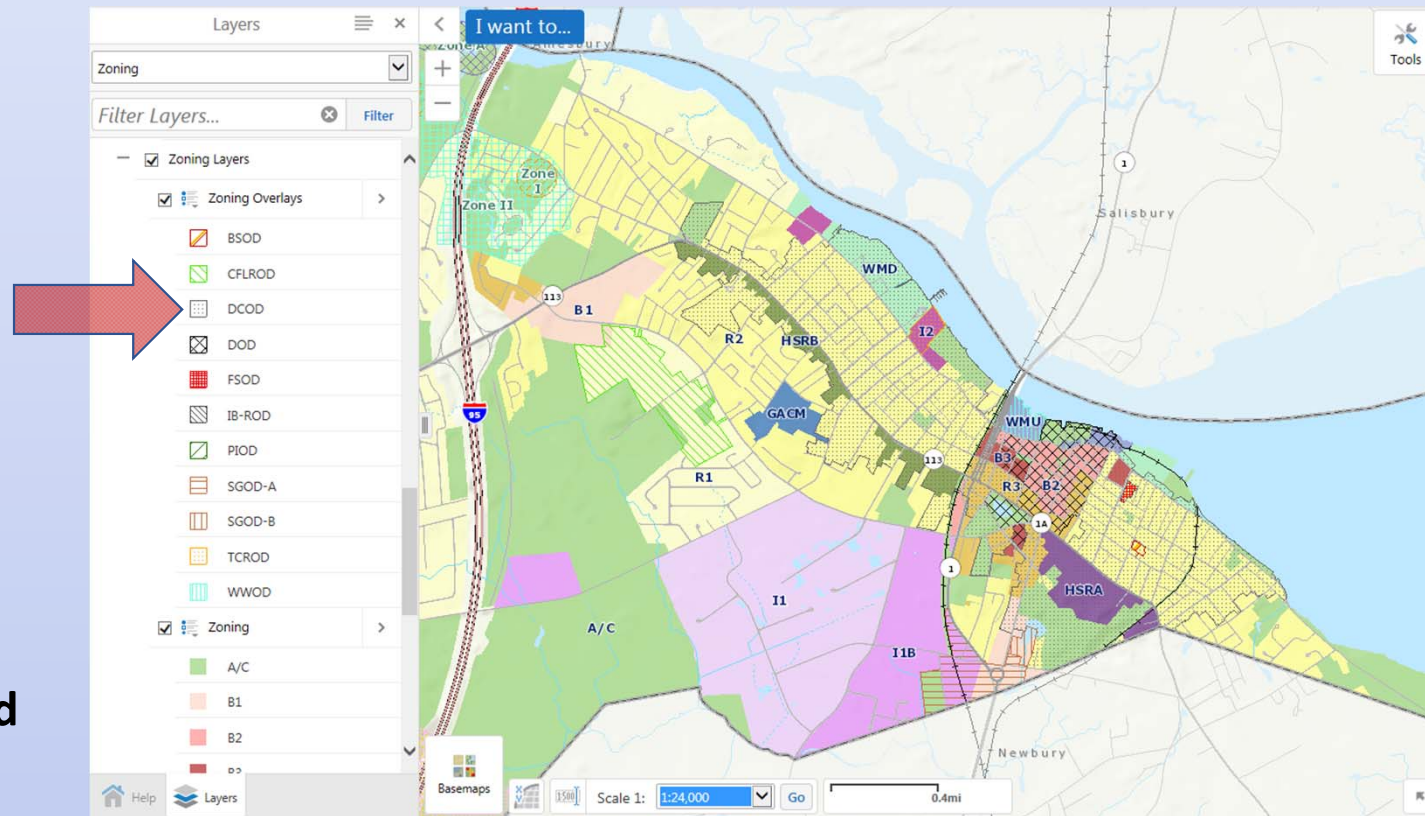
- **Zoning district under Mass. General Laws c. 40A and Home Rule**
- **Compromise in 2014 to replace preservation restrictions expired in 2005, added design review**
- **Commission advises Planning Board**
- **Commission can also hold preservation restrictions**





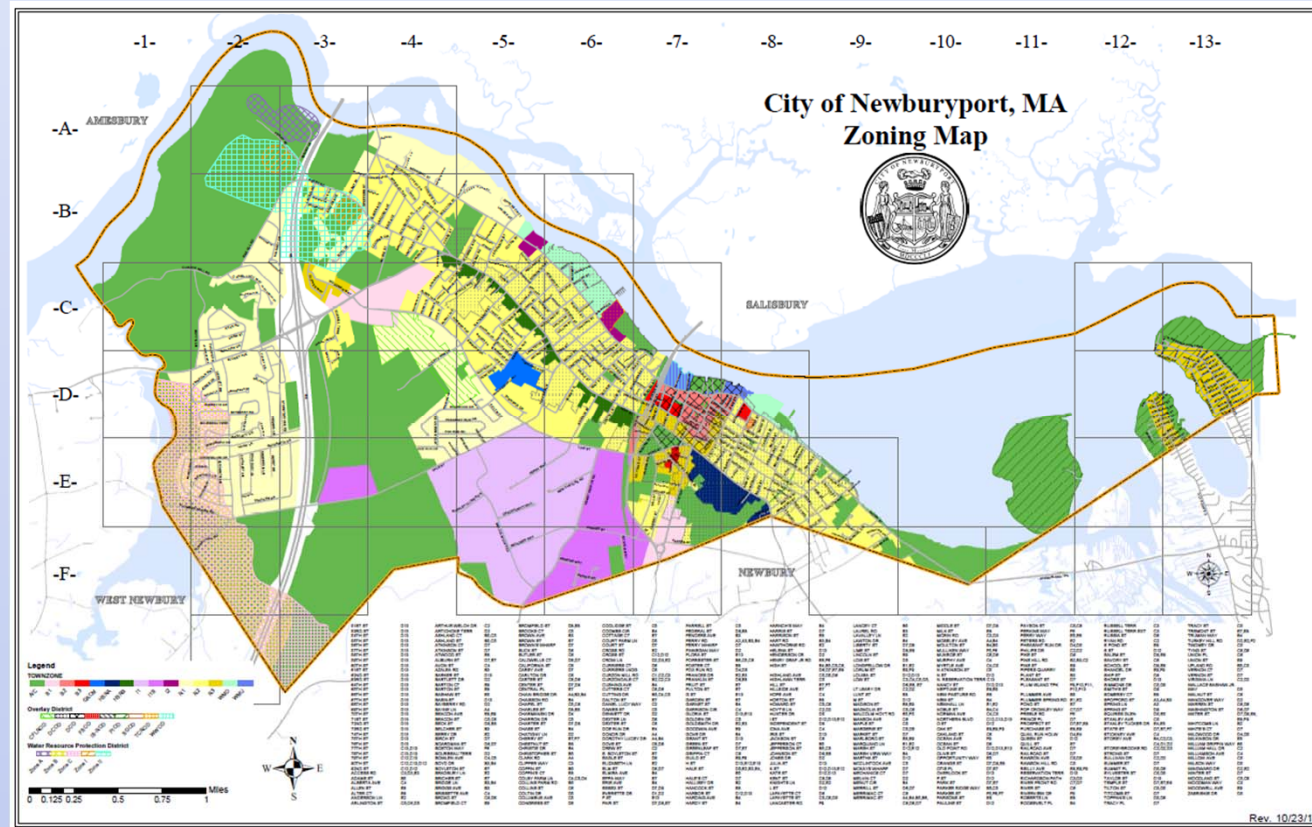
# Demo. Control Overlay District

- **Zoning district under Mass. General Laws c. 40A and Home Rule**
- **Compromise in 2014 to stop razing of historic structures and improper alterations to rooftops**
- **Commission advises Zoning Board of Appeal**
- **Commission can also hold preservation restrictions**



# The Rest of Newburyport

- **Demo Delay is local law, not under any state law**
  - Commission administers for principal structures 75+ years old (and accessory structures 100+ years old)
  - Commission either releases demo permit or invokes delay. Commission may release permit conditionally
- Commission can also hold preservation restrictions



# Demolition Delay

# Demolition Delay

## – What is Reviewed?

- **“Historically Significant Structure” = portions of a principal structure that are 75+ years old, or accessory structure 100+ years old**
- **“Demolition” = even a partial pulling down, destroying, removing, relocating, altering, or razing, including:**
  - Changes in roof pitch / roofline, or to roofed features (towers, cupolas, dormers), unroofed features (railings, decks) projecting above ridgeline or within 3 ft. of edge of flat roof, or building footprint Also applies to moving structure from its lot
- **“Demolition” ≠ (i) work on antennas and other unroofed mechanical, electrical, or electronic equipment not visible from a public way, and (ii) demolition of non-character-defining exterior architectural features per permit history**

# Demolition Delay

## – Designating Structures

**Commission may itself designate any principal or accessory structure as “historically significant” because:**

1. It is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic, or social history of the city or the commonwealth; or
2. It is historically or architecturally significant (in terms of period, style, method of building construction, or association with a famous architect or builder) either by itself or in the context of another building or a group of buildings, such as a neighborhood streetscape or farm complex.

# Demolition Delay

## – Application

**To demolish any relevant portion of an Historic Structure, owner must submit to the Commission**

**Application for Demolition including:**

1. Site Map of existing structure in relation to nearby structures
2. Photographs of all street facades in existing condition
3. Description of Historic Structure
4. If structural deficiency claimed, structural report by a licensed structural engineer
5. Demolition Plan including description of proposed changes including plans and elevations
6. List of all permits required for project, including date of application for each, and any conditions of approval (zoning determination)

# Demolition Delay

## – Initial Determination & Notice

- **Within 30 days from receipt of demolition application, Commission must determine if Historically Significant**
  - Applicant entitled to present to Commission on whether structure is an Historically Significant Structure
  - This presentation ≠ Public Hearing
- **If Commission finds Historically Significant and “should be considered for preservation,” must write Bldg. Commissioner**
  - Commissions invocation of Demo Delay must inform Bldg Comm’r of its initial determination and that Demolition Plan review is required before Bldg Comm’r may issue any demolition permits for historic portions.

# Demolition Delay

– “Preferably Preserved” Review = Public Hearing

- **Public Hearing within 30 Days of Receipt of Application, Held together with Initial Determination, for efficiency**
  - Public notice posted at least 10 days beforehand
  - Public notice mailed at least 7 days beforehand to applicant and certified list of abutters and “abutters to abutters” within 300 feet
  - Commission must reference Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings
- **At Public Hearing, any person may comment on the record**
  - Set rules for maximum time for each commenter, and order that applicant speaks, and Commission deliberates and votes
  - Must take minutes, and file them with City Clerk



# Demolition Delay

– Report to Bldg. Commissioner

- **After Public Hearing, and within 60 days from Demolition Plan filing, Commission must submit its report to Bldg. Comm'r**
  - If report not filed timely by Commission, then Building Commissioner may issue a demolition permit
  - Always file a report within 60 days of NHC Demolition Permit Application!
- **Required contents of report**
  - Age, arch. style, historical associations and importance of structure
  - Determination whether structure “Preferably Preserved” or not

# Demolition Delay

## – Result

- **If structure is to be Preferably Preserved**
  - Bldg. Comm'r must not issue demolition permit for 12 months
  - 12 months start when Commission files its report (up to 60days plus 12 Months after filing demolition permit)
- **If structure is not called to be Preferably-Preserved**
  - Demolition Delay process ends
  - Bldg. Commissioner may issue demolition permits

# Demolition Delay

## – Early Termination

- **Applicant applies to Commission for early termination by:**
  - Submitting amended Demolition Plan including updated materials, and presenting during a regular Commission meeting
  - If “material changes,” Commission may hold new Public Hearing
- **Commission must be satisfied that either:**
  - Bona fide, reasonable and unsuccessful effort to locate person willing to purchase / lease, and to preserve, rehabilitate or restore
  - Applicant has agreed to accept conditions specified by Commission
- **Specified conditions may relate to any aspect of structure**

# Demolition Delay

## – Conduct by Applicant

- **After expiration of 12-month Demolition Delay**
  - 6 mos. to “act to implement” permit as described in application
  - If 6 months with no action then Demolition Plan procedures must start anew
- **Three-year blackout when any illegal demolition occurs:**
  - No building permit can issue for 3 years for parcel and all adjoining parcels under common control at time of illegal demolition, unless Commission gives written permission
  - Three-year period begins after completion of illegal demolition

# Downtown (DOD)

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## – Overview

- **Intent** = protect land use pattern, and City's arch., cultural, econ., political and social heritage through rehabilitation, preservation and enhancement of its historic downtown
- **Special Permit → Alteration of character-defining feature of structure listed as contributor to Newburyport Hist. Dist.**
  - Commission provides Advisory Report to Planning Board
  - No alteration unless Planning Board determines *U.S. Secretary of the Interior Standards* + DOD standards are met
- **Demolition Delay → Work excluded from DOD review by the Planning Board as determined by Zoning Administrator**

# Downtown (DOD)

## – Exclusions

- **Subject to appeal to Zoning Board of Appeal, Zoning Administrator may determine that the following categories of work are excluded from DOD review by Planning Board:**
  - Ordinary maintenance, repair, or replacement in kind (excepting categories such as windows specifically outlined within)
  - Alteration / demolition of non-historic exterior architectural features
  - Alteration, demolition, or replacement of windows, doors, signs, and/or awnings that is reviewed and approved by planning office
  - Work to temporary structures
  - Alteration of a 1- or 2-family building within an underlying residential district
  - Landscaping with plants, trees or shrubs;
  - Work certified by public officer as necessary for public safety, or reconstruction after a disaster if same design, material and appearance

# Downtown (DOD)

## – Character-Defining Features

- **“Character-Defining Feature” = Exterior Architectural Feature, whether existing historically or currently, understood to contribute to significance of the structure at the time of its listing on the State or National Register**
  - Refer to photos, data sheets or survey forms (e.g. “Form Bs”) prepared “in connection with” Nbypt. Hist. Dist., items included in these are considered contributing regardless of date
- **“Exterior Architectural Feature” includes architectural style and general arrangement and setting, kind and texture of exterior building materials, and type and style of windows, doors, lights, chimneys, signs, dormers, and other fixtures**



## Downtown (DOD)

– Application to Demolish, Alter, or Build New

- **At least 30 days prior to submitting application to Planning Board, owner must submit to Commission:**

- Documentation of structure or exterior architectural feature to be affected, including, but not limited to, data sheets or survey forms for prepared in connection with the Nbypt. Hist. Dist.
- Historic, if any, and current photographs of relevant elevations and exterior architectural features
- Architectural plans, elevations and/or renderings depicting proposed new construction, demolition, or alteration
- Photographs of adjacent structures, or setting

## Downtown (DOD)

### – Commission's Historical Report

- **Within 30 days after Commission receives complete application, must submit its Historical Report to Planning Board, regarding:**
  - For demolitions of a structure, significance of structure and its relative importance to its setting within Downtown
  - For all other work, application of the relevant criteria
- **If requested by Planning Board owner must pay to engage professional to report upon existing conditions and feasibility of preservation**
  - Conditions Report must include estimate of reasonable cost to rehabilitate up to Building Code as it applies to historic structures

# Downtown (DOD)

## – Planning Board Decision

- **Planning Board must consider both professional's Conditions Report and Commission's Historical Report.**
- **Planning Board must consider standards specified in ordinance**
  - Must "adhere" to any relevant provisions of U.S. *Secretary of the Interior's Standards for the Treatment of Historic Properties With Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings*, including all related bulletins and other official guidance promulgated by National Park Service
  - Secretary's Standards and guidelines must be applied to all work involving historic properties of all types, materials, construction, sizes, and use within the DOD, and extend to landscape features, site, environment, as well as related new construction

# DCOD

(National Historic District except Downtown)

# DCOD

## – Overview

- **Intent = prevent razing of historic structures unless ZBA determines special permit standards met**
  - Not intended to regulate mere alteration, even demolition of character-defining exterior architectural features.
- **In consultation with Commission, staff must maintain list of all historic structures subject to DCOD**
  - Copy must be kept also by City Clerk, and posted on City website

# DCOD

## – Listed Contributors

- **Demolition of >25% of external walls of structure listed as contributor to Nbypt. Hist. Dist. requires Special Permit**
  - Zoning Board of Appeal decides on Special Permit
  - Commission must send advisory Historical Report to ZBA
  - No special permit unless structure retains “no substantial remaining market value or reasonable use,” taking into account cost of rehabilitation to meet codes for historic structures
- **If <25% demo of external walls no DCOD review but Demo Delay then applies to anything constituting “*new construction, demolition, or alteration involving roof lines, roof pitch, or dormers of historically significant building or structures”* within DCOD**

# DCOD

## – Non-Contributors

- **Demolition of any portion of a Historically Significant Structure not listed as contributor to Nbypt. Historic Dist.**
  - Normal Demolition Delay process still applies
  - **Commission may itself designate any principal or accessory structure as “historically significant” because:**
    1. Importantly associated with one or more historic persons or events, or with the broad arch., cultural, political, econ., or social history of City or Commonwealth; or
    2. Historically or architecturally significant either by itself or in the context of another building or a group of buildings, such as a neighborhood streetscape or farm complex

# DCOD

## – Application to Raze Contributor

- **At least 21 days prior to submitting application to Zoning Board of Appeal, owner must submit to Commission:**
  - Documentation of structure or exterior architectural feature to be affected, including, but not limited to, data sheets or survey forms for prepared in connection with the Nbypt. Hist. Dist.
  - Historic, if any, and current photographs of relevant elevations and exterior architectural features
  - Architectural plans, elevations and/or renderings depicting proposed new construction, demolition, or alteration
  - Photographs of adjacent structures, or setting



## DCOD

### – Commission's Historical Report

- **Within 20 days after ZBA receives complete application, Commission may submit Historical Report regarding:**
  - Significance of historic structure; and
  - Relative importance of historic structure in context of city block
- **Owner must pay for ZBA to engage professional to report upon existing conditions and feasibility of preservation**
  - Conditions Report must include estimate of reasonable cost to rehabilitate up to Bldg Codes as it applies to historic structures
- **To act, ZBA must consider both the professional's Conditions Report and the Commission's Historical Report.**

# DCOD

## – Rooftops

- **Demolition Delay review for rooftops of contributors even if no razing involved**
- **Dormers exempt if:**
  - Setbacks 1'-6"+ from wall below parallel to ridge, and 3'-6"+ from wall below perpendicular to ridge.
  - Do not extend above roof ridge
  - Dormer roof slopes: shed dormer pitch can vary with roof pitch; gabled dormer pitch must match roof pitch (unless roof is gambrel or mansard)
  - No windows in dormer side walls
- **Setbacks for inset decks too**



(dormers exempt from NHC review)



(shed dormers requiring NHC review)

# Preservation Restrictions

# Preservation Restrictions

## – Commission’s Role

- **Preservation restriction = “easement,” which is one person’s right of use over another person’s property**
  - Per MGL. c. 184, can forbid or limit: exterior or interior alterations; changes in appearance or condition of site (not just structure); adding uses not historically appropriate; field investigation; or other acts or uses detrimental to preservation
  - 40-yr. extensions on 40-yr restrictions Downtown not exercised
  - Mass. Hist. Comm’n also reviews, but City relies on Commission
  - MHC approval required for perpetual restrictions (best protection)
  - PRs required for use of CPA funds
- **City, acting through Commission, enforces by injunction**
  - Unenforceable if change in neighborhood character, impedes reasonable/suitable use of land; or unfair or not in public interest

# Consultation with MHC

## Consultation with Mass. Historic Commission – Commission's Role

- **Sometimes, the *Massachusetts* Historical Commission Makes Determinations of Adverse Effect...**
  - ...if there there is federal funding or permitting (36 CFR 800)
  - ... if there is state funding or permitting (MGL c. 9, s. 27C)
- **In those situations, MHC will consult with relevant local body, which is generally the Commission**
  - In all such cases, Commission should adhere to *U.S. Secretary of the Interior's Standards*